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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ERIC STEPHEN FREEZE,

CASE NO. C23-1135JLR

11 Plaintiff,

ORDER

12 v.

13 ELIZABETH E. GALLAGHER, et
al.,

14 Defendants.

15 **I. INTRODUCTION**

16 Before the court is the motion to dismiss filed by Defendants Elizabeth Gallagher,
17 Ann G. Freeze Revocable Trust, Ronald L. Freeze Revocable Trust (together with Ann
18 G. Freeze Revocable Trust, the “Trusts”), James Massingale, and Angela Massingale
19 (collectively, the “Gallagher Defendants”). (Mot. (Dkt. # 35).¹) *Pro se* Plaintiff Eric

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21 _____
22 ¹ The Gallagher Defendants purport to incorporate into their motion facts set forth in their
attorney’s declaration. (*See id.* at 1-2; 3/19/24 Taylor Decl. (Dkt. # 36).) And on April 5, 2024,
Ms. Gallagher and Ms. Massingale filed declarations “in reply to Plaintiff’s response to

1 Stephen Freeze opposes the Gallagher Defendants' motion. (Resp. (Dkt. # 41).) *Pro se*
 2 Defendant Jose T. Acuna did not file any papers in support of or in opposition to the
 3 motion. (*See generally* Dkt.) The court has considered the motion, the parties'
 4 submissions, the relevant portions of the record, and the governing law. Being fully
 5 advised,² the court DENIES the Gallagher Defendants' motion for judgment on the
 6 pleadings without prejudice to renewing the motion with argument and citations to the
 7 record and to authority.

8 **II. BACKGROUND**

9 Mr. Freeze's claims in this matter arise from his eviction from a property in
 10 Concrete, Washington ("the Property") after Ms. Gallagher, as trustee for the Trusts,
 11 prevailed in a quiet title action she filed against him in Skagit County Superior Court.
 12 *See Gallagher v. Freeze*, No. 22-2-00163-4 (Skagit Cnty. Super. Ct.) (hereinafter,
 13 "Gallagher").³

14 Ms. Gallagher, as trustee for the Trusts, filed the quiet title action against Mr.
 15 Freeze in early 2022. (*See* MTD, Ex. 1 ("Gallagher Am. Complaint") ¶ 1.1.) Ms.

16 Defendants' motion to dismiss and motion for sanctions." (Gallagher Decl. (Dkt. # 46) at 1
 17 (capitalization altered); Massingale Decl. (Dkt. # 47) at 1 (same).) Because the court cannot
 18 consider evidence outside the pleadings without converting the motion into one for summary
 19 judgment, *see United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003), the court has not
 20 considered these declarations in deciding the motion.

21 ² No party has requested oral argument (*see* MTD at 1; Resp. at 1) and the court
 22 concludes that oral argument would not be helpful to its disposition of the motion, *see* Local
 23 Rules W.D. Wash. LCR 7(b)(4).

24 ³ The court grants the Gallagher Defendants' request to take judicial notice of documents
 25 and orders filed in *Gallagher*. (Mot. at 3; *id.* Exs. 1-4); *see* Fed. R. Evid. 201(b); *Harris v. Cnty.*
 26 *of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012).

1 Gallagher brought claims against Mr. Freeze for trespass, ejectment, quiet title, nuisance,
 2 and slander of title. (*Id.* ¶¶ 4.1-8.4.) Mr. Freeze answered the complaint and asserted
 3 counterclaims. (*See* Mot., Ex. 2 (“*Gallagher* Summary Judgment Order”) at 1.) On June
 4 2, 2022, the Superior Court granted Ms. Gallagher’s motion for summary judgment and
 5 denied Mr. Freeze’s counter-motion for summary judgment. (*See generally id.*) The
 6 Superior Court (1) quieted title in the Property in favor of Ms. Gallagher on behalf of the
 7 Trusts; (2) ordered Mr. Freeze to vacate the property by July 18, 2022; (3) awarded Ms.
 8 Gallagher damages, attorney’s fees, and costs; and (4) authorized the removal of Mr.
 9 Freeze and his personal property from the Property. (*Id.* ¶¶ 3.1-3.12.)

10 Mr. Freeze failed to vacate the property by the deadline. (*See* Mot., Ex. 3
 11 (“*Gallagher* Damages Order”) ¶ 1.18.) On October 31, 2022, the Superior Court entered
 12 an order granting Ms. Gallagher’s motion for damages, for a supersedeas bond pending
 13 the resolution of Mr. Freeze’s appeal, and for contempt. (*See generally id.*) The Superior
 14 Court ordered Mr. Freeze to vacate and remove his personal property from the Property
 15 by no later than December 1, 2022, and awarded Ms. Gallagher damages and attorney’s
 16 fees. (*Id.* ¶¶ 3.1-3.11.)

17 Mr. Freeze filed his first federal lawsuit arising from his eviction on December 29,
 18 2022. (*See* *Freeze v. McDermott*, No. C22-1844JLR (W.D. Wash.) (hereinafter,
 19 “*McDermott*”).) He amended his complaint on March 29, 2023. (*See generally Am.*
 20 *Compl.* (*McDermott*, Dkt. # 3).) Mr. Freeze asserted a litany of federal and state-law
 21 claims against Ms. Gallagher, the Trusts, and the Trust Defendants’ attorney (together,
 22 the “Trust Defendants”); certain Skagit County officials (“the Skagit County

1 Defendants"); and Mr. Acuna. (*See generally id.*) On May 23, 2023, the court dismissed
 2 Mr. Freeze's claims against all of the *McDermott* defendants except Mr. Acuna because
 3 those claims were precluded by the rulings in *Gallagher* and because Mr. Freeze
 4 effectively abandoned his claims by failing to respond substantively to the Trust
 5 Defendants' and Skagit County Defendants' motion to dismiss. (5/23/23 Order
 6 (*McDermott*, Dkt. # 27).) On July 28, 2023, the court dismissed the matter with prejudice
 7 and without leave to amend after Mr. Freeze failed to respond substantively to an order to
 8 show cause why the court should not dismiss his remaining claim against Mr. Acuna for
 9 failure to state a claim. (7/13/23 Order (*McDermott*, Dkt. # 53); OSC Resp. (*McDermott*,
 10 Dkt. # 63); 7/28/23 Order (*McDermott*, Dkt. # 64).) Mr. Freeze did not appeal any of the
 11 court's orders in *McDermott*. (*See generally McDermott* Dkt.)

12 Mr. Freeze filed his original complaint in this matter on July 31, 2023—just three
 13 days after the court entered judgment in *McDermott*. (*See Compl.* (Dkt. # 1).) He
 14 originally named only Ms. Gallagher, the Trusts, and Mr. Acuna in his complaint, but
 15 later added Mr. Massingale and Ms. Massingale after Ms. Gallagher conveyed the
 16 Property to them. (*See generally id.*; Am. Compl. (Dkt. # 5); Mot., Ex. 6 ("Statutory
 17 Warranty Deed").) He alleges claims against Ms. Gallagher and Mr. Acuna for "Frauds
 18 and Swindles" under common law and 18 U.S.C. § 1341; for violation of the federal
 19 Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961,
 20 1962; and for intentional infliction of emotional distress in violation of 15 U.S.C.
 21 § 6602(5)(B). (*Id.* ¶¶ 5.1-5.10.)

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The Gallagher Defendants filed the instant motion to dismiss on March 19, 2024.

(Mot.) Mr. Freeze responded to the motion on March 20, 2024. (Resp. at 1-3.)

III. ANALYSIS

The Gallagher Defendants assert that Mr. Freeze's amended complaint must be dismissed with prejudice and without leave to amend because the

claims are barred by the doctrines of res judicata and collateral estoppel having been fully litigated and adjudicated in Skagit County Superior Court and in federal court which held unequivocally that Mr. Freeze had “no legal or equitable interest in the Property.”

(Mot. at 3.) They do not, however, set forth the rules the court should apply or explain why each of Mr. Freeze's claims in this case is precluded by the cases that preceded it.

(*See generally id.*) Indeed, the Gallagher Defendants cite neither case law nor the orders in *Gallagher* in their three-page motion, except to seek judicial notice. (*See generally id.*) The court declines to make the Gallagher Defendants' arguments for them.

Therefore, the court DENIES the Gallagher Defendants' motion without prejudice to renewing it with argument and citations to the record and to authority.

V. CONCLUSION

For the foregoing reasons, the court DENIES the Gallagher Defendants' motion to dismiss (Dkt. # 35) without prejudice. The Gallagher Defendants may renew their

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1 motion provided they explain the reasons why the court should grant their motion and
2 include relevant citations to the record and to authority.

Dated this 19th day of April, 2024.



Jim R. Blit

JAMES L. ROBART
United States District Judge